
(2013) 09 PAT CK 0078

In the Patna High Court

Case No : Criminal Revision No. 301 of 2013

Ram Shankar Singh @ Shankar Singh and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 372, 378
Penal Code, 1860 (IPC) — Section 144, 147, 379, 447, 504

Citation : (2014) 1 PLJR 68

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : Akhilesh Pd. Singh, Abhishek Anand and Mrs. Anita Kri. Singh, for the Appellant; Y.C. Verma, Saroj Sandilya for the O.P. No. 2 and Mr. Zainul Abedin for State, for the Respondent

Judgement

Aditya Kumar Trivedi, J.—Petitioners have challenged judgment dated 15.1.2013 passed by 3rd Additional Sessions Judge, Begusarai in Cr. Appeal No. 56/2011 whereby and whereunder the judgment of acquittal dated 28.4.2011 passed by Sri Sharad Chandra Kumar, Judicial Magistrate, 1st Class, Begusarai in G.R. No. 999 of 1997 has been reversed by holding the petitioners guilty for an offence punishable under Sections 144, 447, 379, 504 of the IPC and directed each of them to undergo S.I. for one month, S.I. for one month, S.I. for three months, S.I. for one month under each head respectively. Swaraj Shandilya (since deceased) filed a written report on 4.5.1997 putting an allegation that on the same day at about 9:00 a.m. on getting information, he rushed to the P.O. field and found Bhushan Singh, Shankar Singh, Satish Singh alongwith five other unknown persons engaged in harvesting wheat crop. On his protest, Satish Singh and Bhushan Singh on the point of pistol threatened him. Devendra Singh, Jai Narayan Singh, Yogesh Pd. Singh, Ramesh Singh and Harshwardhan Singh came on his alarm and intervened into the matter. It has further been disclosed that on 3.5.1997 accused, Bhushan Singh had begun to harvest the wheat crop from the P.O. land bearing Khesra No. 429 but could not succeed on account of his

protest. It has further been submitted that out of total area of 10 Katthas 5 Dhurs, he got share and possession over half portion thereof appertaining to 5 Katthas 21/2 Dhurs.

2. Bhagwanpur P.S. Case No. 59/1997 was registered on the basis of the aforesaid written report under Sections 144, 147, 379, 504 of the IPC whereunder charge-sheet was also submitted. The trial commenced and concluded by acquitting the petitioners which has been challenged by the father of the informant under Cr. Appeal before the learned Sessions Judge wherein the judgment of acquittal delivered by the learned trial court was set aside alongwith finding of guilt and sentence hence this revision.

3. While assailing the judgment passed by the learned appellate court, it has been submitted on behalf of petitioners that learned appellate court, virtually, overlooked the settled principle of law that once there is judgment of acquittal, then in that event, its reversion should not be allowed unless and until the trial court had committed blunder mistakes in appreciating the evidence as well as overlooked the material available on the record. It has also been submitted that the law speaks about that in case having the evidence led two views, one in favour of accused, then in that event, the judgment of acquittal should not be disturbed. After going through the judgment of the appellate court, it is apparent that the learned appellate court kept mum with regard to the version accepted by the trial court.

4. Now coming to the evidence, it has also been submitted that evidence of the prosecution witnesses has not been dealt with in its right perspective. The judgment impugned suggests that the same had been scrutinized in a mechanical manner.

5. Apart from this, it has also been submitted that u/s 378 of the Cr.P.C. whereunder appeal has been preferred, did not permit the informant to file an appeal against the judgment of acquittal. By an amendment u/s 372 of the Cr.P.C. such option has been brought into, however, is found not at all applicable in the facts and circumstances of the case because of the fact that the occurrence is of 3.5.1997, that means to say, much before introduction of the amendment in Section 372 of the Cr.P.C.

6. On the other hand, learned counsel for O.P. No. 2 has submitted that there is conclusive evidence with regard to title and possession of prosecution party over half portion of survey plot no. 429 which they had purchased from Fauzdar Jha. There is also consistent version with regard to stealthily cutting away standing wheat crop therefrom by forming an unlawful assembly and on account thereof, the appellate court had rightly convicted the petitioners for an offence punishable under Sections 144, 447, 379 and 504 of the IPC. Therefore, the finding recorded by the appellate court is fit to be confirmed.

7. Learned APP endorsed the said view.

8. From L.C. records, it is evident that altogether 9 PWs have been examined, out of whom, PWs-4, 5, 6 and 7 have not supported the case of prosecution and on account thereof, were declared hostile. PWs-8 and 9 are the formal witnesses who have proved relevant documents for want of examination of I.O. That means to say, I.O. has not been examined in this case. The informant also, on account of his death, could not be examined.

9. Prosecution has also exhibited Ext.-1, written report, Ext.-1/1, formal FIR Ext.-2, rent receipt, Ext.-3 C.C. of sale deed.

10. On the other hand, the defence had also exhibited Ext.-1, compromise petition in Title Suit No. 38/1960, Ext.-B, B/1 C.C. of sale deed.

11. As such, the case of the prosecution rests upon the evidence of three PWs, PW-1, Chandra Shekhar Singh, PW-2, Jai Narayan Singh and PW-3, Mahendra Singh, brother of Chandra Shekhar Singh. After going through the evidence of PW-1, it is evident that he does not happen to be an eye-witness to occurrence. He had narrated the version whatever his son, informant Swaraj Shandilya (since deceased) had disclosed. Hence, his status is of hearsay but on account of death of informant, his such status is found to be completely ruined.

12. PW-2, Jai Narayan Singh had supported the case of the prosecution by way of stating that after hearing alarm, he came on road and seen Satish Singh, Ramshankar Singh and Bhushan Singh engaged in cutting wheat crops from the field of Chandra Shekhar Singh. At an intervention of Swaraj Shandilya, Bhushan and Satish threatened him. On that very time, they were armed with pistol. The accused persons harvested the whole area and took away the wheat crop. In para-5 of his cross-examination, it is evident that there is material contradiction over being an eye witness to occurrence.

13. In likewise manner, PW-3 Mahendra Singh had stated that after being informed regarding cutting of wheat crop stealthily, he alongwith Harshwardhan and Swaraj rushed to the spot and found Bhushan Singh, Satish Singh and Ram Shankar Singh alongwith five unknown persons engaged in cutting wheat crops belonging to Chandra Shekhar Singh. Thereafter, Ravindra Singh caught hold of Swaraj, took him to the road. So many of persons including Jai Narayan Singh, Devendra Singh, Ramesh Singh have witnessed the occurrence. At that very time, Bhushan and Satish were armed with pistol. In para-3 of his cross-examination again there is material contradiction.

14. Apart from inconsistency visualizing from parallel scrutiny of evidence of PW-2 inconsonance with PW-3 such as PW-2 has simply shown presence of only three persons while PW-3 had increased the number. PW-2 had not deposed that Ravindra had caught hold of Swaraj and took him to the road while PW-3 said so. It is also evident from the evidence of PW-2 (para-5) as well as PW-3 (para-3) regarding material development. The non-examination of I.O. in the aforesaid background had really caused prejudice to the petitioners because of the fact that in absence thereof, petitioners have deprived of their valuable right in

getting the material contradiction legally brought up on record. Apart from this, from the evidence of PW-1 (para-8), PW-2 (para-3), PW-3 (para-6), it is evident that both the parties are inter-related and by way of suggestion PW-1 (para-11), PW-2 (para-6), PW-3 (para-7) the petitioners have also put forward their claim of possession.

15. In the aforesaid background the objective finding of the I.O. regarding place of occurrence certainly, would have bearing over the prospect of the instant litigation which the petitioner failed to avail on account of non-examination of I.O.

16. From the judgment of the learned appellate court, it is evident that all theses things have not been taken into consideration more particularly, on account of subsistence of judgment of acquittal.

17. In the case of Kanhaiya Lal & Ors. vs. State of Rajasthan with State of Rajasthan vs. Mangi Lal with State of Rajasthan vs. Mohan Lal & Ors. with State of Rajasthan vs. Babu Lal with Kanhaiya Lal and Others Vs. State of Rajasthan, wherein after dealing with catena of decisions under para-24, 25, 26, 27 in para-28, it has been held that:--

28. In State of Rajasthan vs. Shera Ram alias Vishnu Dutta, after survey of the earlier pronouncements, it has been observed that there is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal, the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.

18. Thus, after giving my anxious consideration to the facts and circumstances of the case, it is apparent that the judgment rendered by the learned appellate court appears to be unsustainable in the eye of law. Consequent thereupon, the same is set aside. Since petitioners are in custody, they are directed to be released forthwith if not wanted in any other case.